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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,649	04/19/2001	Gheorghe Cioca	2870/458	9217

7590 11/04/2005

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/838,649

Applicant(s)

CIOCA ET AL.

Examiner

Shobha Kantamneni

Art Unit

1617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

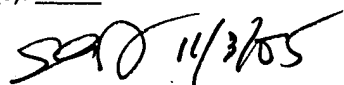
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 1, 2, 4, 5, 9-12, 19, 20 and 22.  
Claim(s) withdrawn from consideration: 6-8, 13-18, 21.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See page 2.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**SHAOJIA A. JIANG, PH.D.**  
PRIMARY EXAMINER

The rejection of claims 1-2, 4-5, 9-12, 19-20 and 22 under 35 U.S.C. 103(a) as being unpatentable over Cioca et al. (6,451,328, of record) in view of Beerse et al. (6,217,887, of record), and further in view of Stroud et al. (6,231,837, of record) in the office action dated 06/06/2005 is MAINTAINED.

Applicant's argument that " Examiner has failed to provide any evidence in these references that it is desirable to combine any antimicrobial with a structured cluster of structured water with the properties claimed therein." This argument is not persuasive because Cioca et al disclose the same structured water of the instant invention, and further teach that the structured water can contain within its cluster structure antibacterials. Beerse et al. teach that silver is a well-known active antimicrobial used in cosmetics, and Stroud et al. teach potassium sorbate is used as a antimicrobial agent in cosmetics. Thus, one of ordinary skill in the art would have been motivated to combine the antimicrobials potassium sorbate, Silver ion and structured water because of the expectation of achieving a topical cosmetic composition that is potent towards bacteria.

Applicant argues that "Therefore, in view of the surprising results, namely, the improved antimicrobial properties achieved by the combination of silver and potassium sorbate incorporated into the structured water clusters, the unexpected results achieved by the method for its use must be considered in determining the patentability of the method." This argument is not persuasive because Cioca et al. disclose a structured water same as instant invention. Cioca et al. further teach that activity of biologically active agents can be enhanced when combined with structured water, and further teaches that incorporation of biologically active agents into structured water can have a beneficial stabilizing effect on the biologically active agent from destabilizing factors such as for example, light, oxygen etc. Thus, one of ordinary skill in the art would have been motivated to combine the well known biologically active agents, such as antimicrobial agents with the structured water with the expectation of obtaining the beneficial effects taught by Cioca et al.